IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 42 OF 2002.

Amarsingh Chauhan, r/o
H. No. 13, Near Toll
Tax Barrier, Shastri
Nagar, Kulu-Himachal
Pradesh. Presently
Central Jail, Aguada. ... Appellant.

Versus

State represented by
Officer-in-Charge, Mapusa
Police Station, Mapusa. ... Respondent.

Mr. S.G. Bhobe, Advocate under L.A.S. for the Appellant.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent State.

Coram : P.V. HARDAS, J.

Date : 13th June 2003.

ORAL JUDGMENT.

The appellant, being aggrieved by his conviction for an offence punishable under Section 20(b)(ii) of the N.D.P.S. Act and sentence of rigorous imprisonment for 10 years and fine of Rs. 1 lakh, in default to undergo simple imprisonment for one year, passed by the Special Judge, N.D.P.S. Court, Mapusa, by Judgment, dated 9th August 2002, in Special Criminal Case No. 18 of 2000, has filed this appeal challenging the conviction and sentence as aforestated.

2. The facts necessary for the decision of the appeal can briefly be stated as hereunder:-

On 14th January 2000, P.W.5 P.S.I. Tushar Vernekar was attached to the Mapusa Police Station as a P.S.I.. On 14th January 2000, at about 4.00 p.m., he received a specific and reliable information that one person aged about 30 years with fair complexion, slim and tall, wearing long sleeve shirt and trousers will come to deliver consignment of charas to his customers near Sateri Temple, Khorlim, Mapusa, between 5.45 to 6.00 p.m. On receipt of the said information, P.W.5 P.S.I. Vernekar reduced the same to writing and made a station diary entry and submitted a copy to the S.D.P.O., Mapusa, that is, P.W.7 Arvind Gawas. the information submitted by P.W.5 P.S.I. Vernekar to P.W.7 Gawas is at Exhibit 24.

3. P.W.5 P.S.I. Vernekar then directed Police Constable Krishna Gurav to secure two panchas for carrying out the raid. The said Police Constable Gurav procured the presence of P.W.3 Stanley Braganza and P.W.4 Vishwas Azgaonkar as panch witnesses. P.W.5 P.S.I. Vernekar then introduced himself to both the panchas and informed them that he had received specific and reliable information and also informed them what information he had received. The panchas were then requested to act as panch witnesses and on their agreeing to do so, they were introduced to the members of the raiding party, which consisted of P.W.7 Gawas,

A.S.I. B.T. Menezes, A.S.I. K.G. Dessai and Police Constables. At 5.20 p.m. P.S.I. Vernekar alongwith the members of the raiding party including the panchas left Mapusa Police Station in a jeep. The members of the raiding party had carried with them kit box containing weighing scale, weights, packing and sealing materials. They had also carried with them the seal of the Mapusa Police Station. At about 5.30 p.m. they reached near the Sateri Temple and parked their jeep about 100 metres away. The members of the raiding party took their position near the temple and kept a watch for the person, whose description they had received. At 6.05 p.m. they saw one person carrying a shoulder bag of purple and green colour near the temple. The description of the person matched with the description which was received earlier and, therefore, the members of the raiding party surrounded him. P.W.5 P.S.I. Vernekar introduced himself and on being asked his name, the said person disclosed his name as Amarsingh Chauhan. The said person has been subsequently identified in the trial as the appellant/accused. P.W.5 P.S.I. Vernekar then introduced the other members of the raiding party and informed the accused that he had received reliable information, which was disclosed to the accused. P.W.4 P.S.I. Vernekar then disclosed his desire to search the accused and apprised him of his right of being searched either before a Gazetted Officer or a Magistrate but,

the accused declined the said offer. P.W.4 P.S.I. Vernekar then offered his personal search and the search of the members of the raiding party but, the accused also declined the said offer. On being searched, the top left hand side pocket of the shirt contained a plastic polythene bag, which contained black colour substance suspected to be charas. It was weighed and it was found to weigh 30 grams. The said substance was packed and sealed with the seal of the Mapusa Police Station. The signature of the accused and the panchas were obtained. The envelope was also signed by P.W.5 P.S.I. Vernekar. During the search of the trousers of the appellant, a leather wallet containing cash of Rs. 5,362/- was found. The said wallet was packed and sealed in the same manner. The search of the shoulder bag yielded black substance weighing about 4.660 kilograms. It was packed in an envelope and sealed as above. The shoulder bag was also attached and sealed in a similar manner. The clothes of the appellant/accused also came to be sealed. The appellant/accused was informed that, since he had no legal documents for possession of the drugs, he had committed an offence under the N.D.P.S. Act, he was informed the grounds of arrest and was taken into custody. A seizure report, which was prepared at the spot, is at Exhibit P.W.3/B. A panchanama of the entire sequence of events was scribed and is at Exhibit P.W.3/A. P.W.5 P.S.I Vernekar

then returned to the Police Station, filed a complaint, which is at Exhibit 15. He then handed over the attached property to Head Constable P.W.6 Mangesh Mayekar. The receipt is at Exhibit 16. He then sent the intimation under Section 57 to his Superior, which is at Exhibit 18. Under covering letters at Exhibits P.W.1/A and P.W.2/A the seized articles were sent for analysis and the same were received by P.W.2 Manohar Joshi, who has acknowledged the receipt on P.W.2/A itself.

4. P.W.2 Joshi received the parcels on 15th January 2000 and after keeping them in the safe custody forwarded the same to the Director, Food and Drugs Administration for analysis. The samples were analysed by P.W.1 Mahesh Kaissare, who received the samples alongwith the covering letter at Exhibit P.W.1/A and also received the specimen seal impression letter, which is at Exhibit P.W.1/B. By his report, at Exhibit P.W.1/C, he found that the samples analysed by him contained charas.

5. On completion of the investigation a charge-sheet against the appellant/accused came to be filed. The learned Special Judge, vide Exhibit 4, framed a charge against the appellant/accused for an offence punishable under Section 20(b)(ii) of the

N.D.P.S. Act. The appellant denied the charge and claimed to be tried. The prosecution in support of its case examined 7 witnesses. The learned trial Judge, on consideration of the evidence, found that the offence had been proved against the appellant/accused and convicted and sentenced him as aforestated.

6. P.W.3 Stanley states that he was requested by the police to act as a panch witness. He was called by the policeman from his house and, accordingly, he and his business partner P.W.4 Vishwas went to the police station. He further states that P.W.5 P.S.I. Vernekar informed them that he had received specific and reliable information that a person would be coming near the Sateri Temple in the evening to deliver the consignment of charas. P.W.5 P.S.I. Vernekar had also informed them that he had sent the information to the Deputy Superintendent of Police. Both the panchas were then introduced to the members of the raiding party. The members of the raiding party then left for the raid and went to Sateri Temple. The jeep was parked about 100 metres away from the temple. At about 5.00 p.m. one person came near the temple and P.W.5 P.S.I. Vernekar informed the members of the raiding party that the description of the said person matched with the description which he had received. P.W.3 Stanley then states about P.W.5 P.S.I. Vernekar giving the offer to

the accused for being searched before a Gazetted Officer or a Magistrate but, the accused/appellant declined it. The offer to search the members of the raiding party was also given, which offer was also declined by the accused. Thereafter the P.S.I. searched the accused and in his left side shirt pocket P.S.I. found a blackish substance weighing about 30 grams. The said blackish substance was then put in a polythene bag and sealed in a brown colour envelope. In the right side pant pocket P.S.I. Vernekar found cash of Rs. 5,362/-, which was also seized and sealed. Search of the shoulder bag yielded about 4.660 Kilograms of substance suspected to be charas. The said substance was packed and sealed in a similar manner. The clothes of the accused were also seized and sealed. Since the accused was not having any legal documents for possession of drugs, he was taken into custody after explaining the ground of arrest. He has identified his signature in the panchanama at Exhibit P.W.3/A.

7. In the cross-examination he has admitted that one Police Constable by name Gurav had come to call him to act as a panch and he was knowing Police Constable Gurav prior about 2 months to the said date. He also admitted that he knew P.W.5 P.S.I. Vernekar, since about 2 months. He has admitted that P.S.I. Vernekar had given offer to the accused of his right to be

searched in the presence of a Gazetted Officer or a Magistrate in Hindi and he was not in position to reproduce the exact words. He has also admitted that the exact words are not reproduced in the panchanama. He has also admitted in the cross-examination that P.W.7 Gawas was introduced to the accused alongwith the members of the raiding party, but the accused was not informed that P.W.7 Gawas was a Gazetted Officer. He has further admitted in the cross-examination that P.S.I. Menezes had retained the seal with him after the process of raid was over. He has also admitted in the cross-examination that he had understood the words used by the accused, to decline to search the raiding party, but, was unable to reproduce the same. He has admitted that he has acted as a panch in cases other than drug cases. He has admitted that he has acted as panch in a murder case at Mapusa Police Station and has admitted that P.W.4 Vishwas was the other panch. He has also admitted that he was an accused in a case of assault on a Police Constable, but was acquitted. He has also admitted that he was once detained under Section 151 of Cr.P.C..

8. P.W.4 Vishwas is the other panch examined by the prosecution. In the examination-in-chief he has deposed in the same manner as was deposed to by P.W.3 Stanley. In the cross-examination he has admitted that

the conversation between P.W.5 Vernekar and the accused was in Hindi. He has also stated that the packing and weighing was done by A.S.I. while the seals were put by Vernekar. He has further admitted in the cross-examination that the accused had stated 'Nahi Chahiye' (do not want) in response to the question for being searched either before a Gazetted Officer or a Magistrate. In the cross-examination also he has reproduced the exact words used by P.W.I. Vernekar to inform the accused of his right of being searched. He has also admitted in the cross-examination that the accused was not informed that P.W.7 Gawas was a Gazetted Officer. He has admitted that he has acted as panch witness alongwith P.W.3 Stanley in a murder case. He has admitted that he alongwith the other panch had signed on the label and then the label was affixed to the parcel. He has denied the suggestion that he was not present when the seizure and sealing was done. P.W.5 P.S.I. Vernekar in the cross-examination had admitted that the details on the envelope were written by him. In respect of Exhibit 3, that is, the parcel containing 4.660 kilograms of charas, P.W.5 P.S.I. Vernekar has admitted that a paper label was affixed as the contents were bulky and it was difficult to write on the envelope directly. He has admitted that he has not affixed any seals to the label pasted on Exhibit 3. He has admitted that the details on the label at Exhibit 3

were written and then it was pasted on the envelope. He has denied the suggestion that the label on Exhibit 3 was affixed at the Police Station and the signatures of the panchas were taken on a blank paper for using it as a label. He has also admitted that he had handed over the seal to A.S.I. Menezes at the spot itself after the process was over. He has admitted that he does not know if P.S.I. Menezes had handed over the seals to Head Constable Mayekar. He has, however, admitted that he had given the seals to him on the next day for embossing on the letter and on the same day he returned the seal back to P.S.I. Menezes after embossing on the said letter. He has admitted that the seal is normally in the custody of the Officer-in-charge of the police station and at the relevant time P.S.I. Menezes was holding charge of the Mapusa Police Station and the seal was in his custody. He has admitted that the sealing was done by him personally. He has admitted that the sealing wax was put by A.S.I. Dessai but the actual affixation of the seal was done by him. He has denied the suggestion that he had not seized any drugs and that the panchas had signed the panchanama at the Police Station as they were obliging witnesses.

9. P.W.6 Mangesh Mayekar stated that on 14th January 2000 P.W.5 P.S.I. Vernekar had handed over to him 5 sealed envelopes, which he had entered in the

Muddemal Register under Entry No. 8/2000 and had also issued a receipt at Exhibit 16 to P.W.5 P.S.I. Vernekar. He states that on the next day he had handed over two sealed envelopes marked Exhibits 1 and 3 to Police Constable Gurav, as per the directions of the Investigating Officer, for the purpose of carrying the same for analysis. A record was made in the Muddemal Register to that effect. The Muddemal Register is at Exhibit 20. In the cross-examination he has admitted that in cases where he issues receipts of the muddemal property, he does not write the muddemal register number on the property but in other cases where receipt is not issued, he writes the muddemal register number on the property. He has admitted that none of the 5 envelopes bear his initials. He has denied the suggestion that he had not received the 5 envelopes in sealed condition on 14th January 2000 or that two of the sealed envelopes were handed over to Police Constable on 15th January 2000 for onward dispatch to the laboratory.

10. P.W.7 Deputy Superintendent of Police Gawas states about having received information from P.W.5 P.S.I. Vernekar and of having accompanied the raiding party for search. He also speaks about 4.660 kilograms of charas and 30 grams of charas. In the cross-examination he has admitted that P.W.5. P.S.I. Vernekar had personally come to him with a copy of the

information. He has denied the suggestion that he had not received any information. He has also admitted that the accused was not informed that he was a Gazetted Officer at any stage during the raid. He has also reproduced the exact words used P.W.5 P.S.I. Vernekar to inform the accused of his right of being searched.

11. Mr. Bhobe, the learned counsel, who has been appointed from the Legal Aid Panel, has urged before me that the manner of sealing of Exhibit 3, an envelope containing 4.660 kilograms of charas, raises doubt about the bonafide of the prosecution that the said envelope was sealed at the spot itself. Secondly, he has urged that, as the exact words used by the accused have not been incorporated in the panchanama at Exhibit P.W.3/A, there is non-compliance of Section 50 of the N.D.P.S. Act. Thirdly, he has urged that there is every possibility of the sealed articles having been tampered with and, as such, benefit of doubt should be given to the accused.

12. The learned Public Prosecutor opposing the submissions has urged before me that the evidence regarding sealing of Exhibit 3 is entirely satisfactory and no manner of doubt is created regarding the sealing of Exhibit 3 at the spot. He has submitted that though the exact words had not been incorporated in the

panchanama, the witnesses have been asked about the same and have reproduced them. He has submitted that there is no iota of evidence to hold that there was a possibility of the samples having been tampered with. P.W.5 P.S.I. Vernekar has stated that the label affixed on Exhibit 3 was signed by the panchas, the accused and himself and, thereafter, it was affixed on Exhibit 3, a packet containing 4.660 kilograms of charas. According to him, this was necessitated on account of the bulkiness of the contents, which rendered normal writing on the envelope impossible. Though he has admitted that the label does not bear any seal, according to me, this would not bring the sealing under a cloud because the prosecution has examined P.W.6 Mangesh, who has deposed that immediately after the raid the packets were handed over to him for safe custody and on the next day he had handed over the same to the Police Constable Gurav for onward transmission to the laboratory. P.W.5 P.S.I. Vernekar has admitted that immediately after the sealing was done, he had handed over the seal to P.S.I. Menezes, who was then in-charge of the Mapusa Police Station. He has also admitted that he had taken the seal for preparing the letter of specimen seal to be sent alongwith the envelopes containing the drugs. He has further stated that the seal was immediately handed over back to P.S.I. Menezes. There is nothing in the prosecution case to discredit this version of P.S.I.

Vernekar that he had taken the seal for preparing the letter and handed over the seal back to P.S.I. Menezes, who, at the relevant time was in-charge of the Mapusa Police Station. The seal was never in the custody of P.W.5 P.S.I. Vernekar as the same had been handed over by him to P.S.I. Menezes. He had obtained the possession of the seal for a limited duration for preparing the specimen seal impression letter. There is nothing in the cross-examination which will render this statement of P.W.4 P.S.I. Vernekar as false.

13. On appreciation of the evidence, therefore, it is clear that there was no opportunity whatsoever for P.S.I. Vernekar to have tampered with the seals on the various envelopes. The manner in which Exhibit 3 was affixed with the label also does not indicate that it was done subsequently at the Police Station. The panch witnesses have referred to the preparation and affixation of the label immediately on Exhibit 3. It is also reflected in the panchanama at Exhibit P.W.3/A. Therefore, in my considered opinion, the submission of the learned counsel for the appellant/accused is devoid of any merit.

14. The accused on being accosted was informed that he had a right of being searched either before a

Gazetted Officer or a Magistrate. In the panchanama at Exhibit P.W.3/A, it was stated that the accused was apprised of his right in Hindi. In the panchanama, the exact words used by P.W.%. P.S.I. Vernekar have not been incorporated. However, P.W.4 Vishwas, P.W.5 P.S.I. Vernekar and P.W.7 Gawas on being questioned in the cross-examination have deposed about the exact words used by P.W.5 P.S.I. Vernekar to convey the right to the appellant/accused. Mere failure of the prosecution to reproduce the exact words used to convey the right to the appellant/accused in the panchanama, would not lead to an inference of breach of Section 50of the N.D.P.S. Act. The answer given by the accused, which has been deposed to by witnesses, clearly indicates that the accused understood what was conveyed to him and had declined the said offer. In the face of this evidence, therefore, according to me, the argument that there is a breach of Section 50 of the N.D.P.S. Act is without any force.

15. Therefore, in my considered opinion, the prosecution has been able to establish the offence against the accused beyond reasonable doubt and the conviction and sentence, as recorded, needs no interference.

16. Criminal Appeal, therefore, is dismissed.

Since the appellant/accused is in jail, a copy of this Judgment be sent to the appellant/accused.

(P.V. HARDAS)
JUDGE.

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